1 2 3 4 5 6 7	MICHAEL J. AGUIRRE, City Attorney WENDY E. DAVISSON, Deputy City Attorney California State Bar No. 199146 Office of the City Attorney 1200 Third Avenue, Suite 1100 San Diego, California 92101-4100 Telephone: (619) 533-5800 Facsimile: (619) 533-5856 Attorneys for Defendants Tagaban; Griffin; Lemus; San Diego Police Department and City of San Diego	
8	UNITED STATES DISTRICT COURT	
9	SOUTHERN DISTRICT OF CALIFORNIA	
10	WILLIAM JOHN DAUGHTERY,	Case No. 08cv408 (WQH) BLM
11	Plaintiff,	NOTICE OF MOTION AND MOTION IN SUPPORT OF DEFENDANTS TAGABAN
12	v.	GRIFFIN, LEMUS, SAN DIEGO POLICE DEPARTMENT AND CITY OF SAN
13		DIEGO'S MOTION TO DISMISS FIRST AMENDED COMPLANT AGAINST SAN
14	DENNIS WILSON; ESMERALDA TAGABAN; GRIFFIN; LEMUS, CITY OF	DIEGO POLICE DEPARTMENT AND CITY OF SAN DIEGO FOR FAILURE TO
15	SAN DIEGO AND SAN DIEGO POLICE DEPARTMENT	STATE A CLAIM UPON WHICH RELIED MAY BE GRANTED
16	Defendants.	(Fed. R. Civ. P. 12(b)(6))
17) Judge: Hon.William Q. Hayes
18		Courtroom: $4-4^{th}$ Floor Date: September 8, 2008
19		Magistrate: Hon. Barbara L. Major
20		NO ORAL ARGUMENT
21		
22 23	TO PLAINTIFF WILLIAM JOHN DAUGHERTY, PRO SE, PLEASE TAKE	
24	NOTICE:	
25	On September 8, 2008, before the Honorable William Q. Hayes, in Courtroom 4, located	
26	at 940 Front Street, Fifth Floor, San Diego, California, Defendants Tagaban, Griffin, Lemus, San Diego Police Department and City of San Diego through Deputy City Attorney Wendy E.	
27	Davission, will move the Court for an Order dismissing the Plaintiff's First Amended Complaint	
28	in the above-captioned action, as to Defendants San Diego Police Department and City of San	
_0	1 die above-eaptioned action, as to Defendants San Diego i once Department and City of San	
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Diego with prejudice, or as the Court deems appropriate, pursuant to Federal Rule of Civil 2 Procedure 12(b)(6). 3 This Motion shall be based on the Points and Authorities in support thereof, and the 4 following: 5 1. Dismissal of Plaintiff's pendent claim(s) against the City of San Diego and its San Diego Police Department is appropriate, where the claim(s) are barred for failure to 6 plead and show compliance with California's Government Code. 7 2. To the extent Plaintiff seeks to assert claim(s) under California's Penal Code, dismissal of the claim(s) is appropriate where the Penal Code does not create 8 enforceable individual rights. 9 3. To the extent Plaintiff seeks to assert any new claim under 42 U.S.C. § 1983, against the City of San Diego or the San Diego Police Department, dismissal is appropriate 10 where the claim is time-barred by the two year statute of limitations and where Plaintiff fails to state a claim. 11 4. Dismissal of Plaintiff's action(s) against the San Diego Police Department and the City of San Diego is appropriate, upon Plaintiff's failure to state a claim upon which 12 relief may be granted. 13 5. Plaintiff's claims against the San Diego Police Department and the City of San Diego accrued on March 9, 2006. 14 15 6. Plaintiff's conduct shows his ability to commence and prosecute this action while incarcerated, and Plaintiff cannot show any legitimate excuse to avoid application of **16** California Code of Civil Procedure section 335.1 to his action against the San Diego Police Department or the City of San Diego. **17** 7. The action against the San Diego Police Department or the City of San Diego for the March 9, 2006, event(s) at issue, are not actionable if time barred. 18 19 The Motion is based upon this Notice of Motion and Motion, the Memorandum of Points 20 and Authorities in support of the Motion, the Plaintiff's First Amended Complaint on file in this 21 Court, any matters to which the Court may take judicial notice, the orders, pleadings, and papers 22 filed herein, and such arguments and evidence as may be presented to the Court at the time of the 23 hearing and/or any oral argument made on the Motion. Dated: July 29, 2008 MICHAEL J. AGUIRRE, City Attorney 24 25 Bv/s/ Wendy Davisson 26 Wendy E. Davisson 27 Attorneys for Defendants Dennis Wilson; Esmeralda Tagaban; Griffin; 28 Lemus, San Diego Police Department and City of San Diego

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